

John Morrison
Robert Farris-Olsen
MORRISON, SHERWOOD,
WILSON, & DEOLA, PLLP
401 N. Last Chance Gulch St.
Helena, MT 59601
ph. (406) 442-3261
fax (406) 443-7294
john@mswdlaw.com
rfolsen@mswdlaw.com
Attorneys for Plaintiff Tanya Gersh

David C. Dinielli*
Jim Knoepp*
Elizabeth Littrell*
SOUTHERN POVERTY LAW CENTER
400 Washington Avenue
Montgomery, AL 36104
ph. (334) 956-8200
fax (334) 956-8481
david.dinielli@splcenter.org
jim.knoepp@splcenter.org
beth.littrell@splcenter.org
Attorneys for Plaintiff Tanya Gersh
*Admitted *Pro Hac Vice*

UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA
MISSOULA DIVISION

TANYA GERSH,

Plaintiff,

vs.

ANDREW ANGLIN, publisher of the
Daily Stormer,

Defendant.

Case No.: 9:17-cv-00050-DLC-JCL

**MOTION FOR DEFAULT
JUDGMENT AND REQUEST FOR
EVIDENTIARY HEARING**

COMES NOW, Plaintiff TANYA GERSH, and, pursuant to Rule 55(b)(2) and Rule 37(d)(2) of the Federal Rules of Civil Procedure, files this motion for a judgment by default for failure to comply with this Court's Orders and discovery obligations and requests an evidentiary hearing to determine damages. The grounds for this Motion are as follows:

1. Plaintiff filed her Complaint in the above-captioned case on April 18, 2017, alleging that Defendant had invaded her privacy, intended to and did inflict emotional distress on her, and violated the Montana Anti-Intimidation Act. (Dkt. No. 1).
2. Through the course of this litigation, Defendant has failed to meet his discovery obligations or to comply with a number of this Court's Orders, including to disclose a financial statement regarding Defendant's net worth (Dkt. Nos. 131, 160) and to appear for a properly noticed in-person deposition (Dkt. No. 182).
3. On April 18, 2019, Counsel for Ms. Gersh served counsel for Defendant with a Notice of Deposition Upon Oral Examination of Andrew Anglin commencing at 9:00 a.m. on April 30, 2019. (Dkt. No. 185-2).
4. On April 22, 2019, this Court conducted a status conference at the request of counsel for both parties ("Status Conference").

5. During the Status Conference, this Court noted representation by counsel for Defendant of his client's intent not to appear for his deposition and cautioned Defendant that if he failed to appear for his deposition pursuant to the Rule 30(b) notice of his deposition, and "in view of the Court's Order entered April 5, 2019, denying Anglin's motion for protective order relative to his deposition, the Court will enter Anglin's default in this matter. Thereafter, the Court would entertain a motion filed by Gersh under Fed. R. Civ. P. 37(d)(1) for the entry of default judgment against Anglin as provided in Rule 37(d)(3)."
6. The Court memorialized the Status Conference, and the Court's warning to Defendant, in an Order dated April 22, 2019. (Dkt No. 182).
7. On April 30, 2019, counsel for Ms. Gersh appeared at the date and time of the noticed deposition. Counsel for Defendant appeared by telephone, as did counsel for Intervenor. After one hour, Plaintiff's counsel went on record to note Defendant's failure to appear.
8. The Court thereafter issued an Order directing the Clerk of Court to enter Defendant's default. (Dkt. No. 186).
9. On April 30, 2019, the Clerk of Court filed an Entry of Default as to Andrew Anglin pursuant to Rule 55(a). (Dkt. No. 188).

10. On June 20, 2019 this Court issued an order setting a hearing on Plaintiff's Motion for Entry of Default Judgment for July 11, 2019. (Dkt. No. 200).

11. Plaintiff is entitled to judgment as a matter of law.

12. This Motion is accompanied by a memorandum of law.

PRAYER FOR RELIEF

Pursuant to the provisions of Rules 37(d)(2) and 55(b)(2) of the Federal Rules of Civil Procedure, this Court is empowered to enter default judgment against Defendant.

Further, Plaintiff requests an evidentiary hearing on July 11, 2019, in order to present evidence to assist this Court determine an damage award that is just and reasonable. Plaintiff anticipates she will need approximately four hours for purposes of proving-up damages.

DATED June 21, 2019.

/s/ Elizabeth Littrell
Attorney for Plaintiff Tanya Gersh
on behalf of all Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this date the foregoing document was filed through the Court's CM/ECF filing system, and by virtue of this filing notice will be sent electronically to all counsel of record, including:

Jonathan W. Bennion
MONTANA DEPARTMENT OF JUSTICE
215 North Sanders
PO Box 201401
Helena, MT 59620-1401
jonbennion@mt.gov
Attorney for Intervenor State of Montana

Matthew T. Cochenour
MONTANA DEPARTMENT OF JUSTICE
215 North Sanders
PO Box 201401
Helena, MT 59620-1401
mcochenour2@mt.gov
Attorney for Intervenor State of Montana

Hannah E. Tokerud
MONTANA DEPARTMENT OF JUSTICE
215 North Sanders
PO Box 201401
Helena, MT 59620-1401
hannah.tokerud@mt.gov
Attorney for Intervenor State of Montana

on this 21st day of June, 2019.

/s/ Elizabeth Littrell
Attorney for Plaintiff Tanya Gersh
on behalf of all Attorneys for Plaintiff